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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/617,065	07/13/2000	Noeman Understein	2802-5 (AMK)	7218
23117 7590 08/20/2009 NIXON & VANDERHYE, PC 901 NORTH GLEBE ROAD, 11TH FLOOR ARLINGTON, VA 22203				
EXAMINER GREENE, DANIEL LAWSON				
ART UNIT		PAPER NUMBER		
3694				
MAIL DATE		DELIVERY MODE		
08/20/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
After the Filing of an Appeal Brief

Application No.	Applicant(s)	
09/617,065	UNDERSTEIN, NORMAN	
Examiner	Art Unit	
DANIEL L. GREENE JR.	3694	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The reply filed 30 June 2008 is acknowledged.

1. ☒ The reply filed on or after the date of filing of an appeal brief, but prior to a final decision by the Board of Patent Appeals and Interferences, will not be entered because:

a. ☐ The amendment is not limited to canceling claims (where the cancellation does not affect the scope of any other pending claims) or rewriting dependent claims into independent form (no limitation of a dependent claim can be excluded in rewriting that claim). See 37 CFR 41.33(b) and (c).

b. ☒ The affidavit or other evidence is not timely filed before the filing of an appeal brief.
See 37 CFR 41.33(d)(2).

2. ☐ The reply is not entered because it was not filed within the two month time period set forth in 37 CFR 41.39(b), 41.50(a)(2), or 41.50(b) (whichever is appropriate). Extensions of time under 37 CFR 1.136(a) are not available.

Note: This paragraph is for a reply filed in response to one of the following: (a) an examiner's answer that includes a new ground of rejection (37 CFR 41.39(a)(2)); (b) a supplemental examiner's answer written in response to a remand by the Board of Patent Appeals and Interferences for further consideration of rejection (37 CFR 41.50(a)(2)); or (c) a Board of Patent Appeals and Interferences decision that includes a new ground of rejection (37 CFR 41.50(b)).

3. ☐ The reply is entered. An explanation of the status of the claims after entry is below or attached.

4. ☒ Other: The 6/30/2008 Declaration WILL NOT be entered and/or considered for at least the following reasons: a. it is merely an opinionated declaration with no evidence in support thereof AND b. said declaration does NOT overcome all the rejections under appeal per 37 CFR § 41.33 (d)(1).

It is not seen where any FACTUAL EVIDENCE is presented within the declaration. It is noted that Mr. Baumann's statements alone without presentation of factual evidence can only be construed as an opinion. No patentable weight can be given to an opinionated declaration. Consequently, said declaration cannot be relied upon as an adequate response to the issues presented in the Examiners Answer mailed 4/4/2008.

Case Law provides for no weight being given to an opinionated declaration on the ultimate Legal conclusion in issue. See *in re Lindell*, 155 USPQ 251. See also *in re Pike et al.* 84 USPQ 235.

/Mary Cheung/
Primary Examiner, Art Unit 3694